

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 249 OF 1995**

Smt. Lavinga Bharat Khavadiya

& Ors.

..Appellants

versus

Vishwambar Sadanand Swami

& Ors.

..Respondents

Mr. V. B. Rajure for the Appellants.

Mr. S. S. Salunkhe h/f. Anil Kumar Patil, for
the Respondents No.2.

CORAM : D. G. DESHPANDE, J.

DATE : 19TH JANUARY, 2005

ORAL ORDER :

1. Heard learned counsel for the appellants and the respondent No.2

2. This appeal is filed by the original claimants. Appellant no.1 is the widow and others are children and the parents of the deceased. The name of the deceased is Bharat Khengar Khavadiya, he died in an accident on 18.9.1988 involving two vehicles. On that day deceased was travelling in

Tempo No.MWF-4048 for going to Pusegaon to sell spices and condiments in Bazar, as usual. He was sitting in the backside portion of the tempo. Another tempo No.MTL 6847 driven by opponent no.1 came from the opposite direction. It was driven in rash and negligent manner, it dashed against the tempo which was occupied by the deceased. Deceased was thrown out and sustained injuries and died on the spot. Initially a claim petition was made against original opponent Nos. 1, 2 and 3. The accident took place on 18.9.1988 and claim petition was filed on 15.11.1988. Thereafter i.e. after about a gap of six years amendment was sought to the claim petition to add opponent Nos. 4 and 5 owner and driver of the other vehicle and insurance company covering the vehicle of Opponent No.4 and 5 was already there on record. This amendment was sought by application dated 30.9.1994. In the end while coming to the conclusion that it was a contributory negligence of both the vehicles, the Tribunal came to the conclusion that the appellants were entitled to compensation of Rs.90,000/= and since both the vehicles were equally liable opponent Nos. 1, 2 and 3 were jointly made liable to pay Rs.45,000/=. Claim against original Opponent Nos. 4, 5 and 6 i.e. present respondent Nos., 4,5 and 6 was disallowed because the Tribunal held that the claim against them was barred by limitation. The

reasonings given by the Tribunal are as under:

"Advocate for Opponent Nos. 4 and 5 i.e. driver and owner of MWF-4048, the vehicle in which deceased was travelling, has claimed that the claim as against his client is barred by limitation and I feel he is justified in arguing in that manner. As rightly pointed out by him, the accident took place on 18th September 1988, the petition was presented on 15th November 1988 and present Opponent Nos. 4 and 5 were added only by amendment sought on 30th September 1994. The limitation to file such a petition was six months under Motor Vehicles Act, 1939 and the Tribunal had discretion to condone delay was curbed. The old Act enabled the Tribunal to entertain the application filed howsoever late, if the delay was for satisfactory reasons (Section 110-A-3 of Motor Vehicles Act, 1939). However, by Motor Vehicles Act, 1988 proviso to section 166/3 the discretion of the Tribunal is taken away. It cannot condone the delay, if the application is filed after more than 12 months. The petitioners have not impleaded Opponent Nos. 4 and 5 within 1 year i.e. on or before 1st July 1990.

Thus, even giving benefit of amended procedural part of the Motor Vehicles Act still Opponent Nos. 4 and 5 are impleaded, after period of limitation to file the claim against them, had expired."

3. Counsel for the appellants contended that Supreme Court in (1996)4 Supreme Court Cases 652 **Dhannalal vs. D. P. Vijayvargiya and others** held that interpreting Sub-Section (3) of Section 166 with effect of Amendment Act is with effect from 14.11.1994. There is no limitation for filing claim petitions before the Tribunal in respect of any accident. Then further the Supreme Court observed that from the Amending Act it does not appear that sub section (3) has been deleted retrospectively. But at the same time, there is nothing in the amending Act to show that benefit of deletion of sub section (3) of section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. However, sub section 3 of Section 66 has been omitted, then the Tribunal has to entertain a claim petition without making note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petition is barred by time when sub section (3) of Section 166 was in force. The judgment of the Supreme Court is followed in **AIR**

2001 Allahabad 145 New India Assurance Comapny Ltd., Kanpur vs. Km. Vibha Devi and others, wherein Allahabad High Court held that benefit of amending Act can be extended retrospectively to pending claim cases where plea of limitation is taken.

4. I find considerable force in the argument because when the amendment to add respondent Nos. - Original Opponent Nos. 4 and 5 sought on 30.9.1994 new Act had come into force where there was no limitation prescribed for filing claim petitions. Question therefore is if the claim petition is filed on 30.9.1994 for an accident occurring on 18.9.1988 whether the same would be barred or not, and, in view of the aforesaid judgment, firstly, it would not be barred and secondly if the claim could be one under the Old Act, the Tribunal should not have disallowed the claim against Opponent Nos. 4 and 5 because their insurer was already on record as opponent No. 6 New India Assurance Co. Therefore when the insurer is on record from the beginning when the claim petition was filed obviously it referred to the tempo MWF 4048 and in directly it referred to the owner because the insurance was done by the owner in respect of the said vehicle. Therefore, for the aforesaid reasons and looking to the aforesaid two judgments, judgment of the Tribunal disallowing the claim against original

Opponent Nos. 4, 5 and 6 is required to be set aside. I, therefore, pass the following order:

ORDER

. Appeal is allowed to the extent prayed i.e. respondent Nos. 4, 5 and 6 shall be liable to pay Rs.45,000/= in addition to whatever has been awarded by the Tribunal against Opponent Nos. 1 to 3. They will be required to pay interest at the rate of 8% on the said amount of Rs.45,000/- from 15.11.1988 till realisation and costs of the Appeal.

19.1.2005

(D.G. DESHPANDE, J.)